

UNITED STATE OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX

UNIFIRST CORPORATION

Employer

and

Case 6-RC-12214

TEAMSTERS LOCAL UNION NO. 175,  
a/w INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, UniFirst Corporation, operates a textile and uniform rental facility in Clarksburg, West Virginia, where it employs nine route salesmen, two Route Supervisors and one loader/unloader. The Petitioner, Teamsters Local Union No. 175, affiliated with International Brotherhood of Teamsters, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of all full-time and regular part-time route salesmen employed by the Employer at its Clarksburg, West Virginia facility; excluding all office clerical employees, loader/unloaders,<sup>1</sup> and all professional employees, guards and supervisors as defined in the Act.

The parties are in general agreement with respect to the composition of the unit. However, at the hearing and in their briefs, the parties disagree on the unit placement of the two Route Supervisors, Norm Kearns and Kenny Eddy.<sup>2</sup> The Petitioner, contrary to the Employer,

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<sup>1</sup> In the unit description, as amended, the loader/unloader was described as a "dock worker." However, the name used by the parties at the hearing was "loader/unloader" and accordingly that name is used herein.

<sup>2</sup> The Route Supervisors are also referred to as Route Jumpers and District Service Supervisors.

contends that the Route Supervisors must be excluded from the petitioned-for unit because they are statutory supervisors. Further, the Employer contends, contrary to the Petitioner, that the exclusion of the loader/unloader is inappropriate in that he shares a community of interest with the route salesmen and his exclusion could produce the incongruous result of him being the only unrepresented employee. Excluding the Route Supervisors and the loader/unloader, the size of the unit sought by the Petitioner is nine employees. The size of the unit the Employer contends is appropriate, including the Route Supervisors and the loader/unloader, is 12 employees.

Thus, the parties disagree on the following two issues: (1) whether the Route Supervisors are statutory supervisors; and (2) whether it is inappropriate to exclude the loader/unloader position from the petitioned-for unit.

I have carefully considered the evidence and the arguments presented by the parties on the issues and I have concluded, as discussed below, that the Petitioner has not met its burden of establishing that the Route Supervisors are statutory supervisors. I have further concluded that the exclusion of the loader/unloader is inappropriate. Accordingly, I have directed an election in a unit of approximately 12 employees, including the Route Supervisors and the loader/unloader.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

## **I. OVERVIEW OF OPERATIONS**

The Employer is a Massachusetts corporation engaged in the business of renting, cleaning and distributing linens, work uniforms and other items, with operations in the 48 contiguous states and in Canada. From its facility located in Clarksburg, West Virginia, the

Employer services customers in West Virginia, Pennsylvania, Maryland and Ohio, distributing clean linens and uniforms, along with other supplies, and retrieving soiled rental items.<sup>3</sup>

The Employer's Clarksburg, West Virginia facility, is under the direction of Branch Manager Dan Bednar. Reporting directly to Bednar are two District Service Managers (DSMs), Charles "Chip" Adams and Phil Davis.<sup>4</sup> Route Supervisor Norm Kerns and four route salesmen report to DSM Adams. Similarly, Route Supervisor Kenny Eddy and five route salesmen report to DSM Davis. There is also one loader/unloader who reports to the DSMs. Also employed at the facility are two salesmen as well as office clerical employees.

#### **A. Route Salesmen**

The Employer employs nine route salesmen at its Clarksburg, West Virginia facility. Each of the route salesmen has a designated route and services about 25 customers per day.

On a typical day, the route salesmen first inspect their trucks to ensure that all required product such as uniforms, mats, wipers (or shop towels) and restroom supplies, are actually on the truck, and they make changes as necessary. The route salesmen then leave the facility to service their accounts. This entails delivering the products to the customers and picking up soiled items, selling additional products to customers, handling service complaints and collecting monies owed. The route salesmen also make cold calls to solicit new business, install new accounts, and pick up stock from customers that are closing their accounts. They occasionally "run specials", that is, make a special trip to deliver missing products or additional items required.

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<sup>3</sup> This facility does not launder the products it distributes. Rather, the products are laundered at the Employer's facility in New Kensington, Pennsylvania. Soiled and clean products are shuttled between the two locations by truck on a daily basis. The shuttle drivers are employed by the New Kensington facility and are responsible for the loading and unloading of their trucks at the Clarksburg, West Virginia location.

<sup>4</sup> The parties have stipulated and I find that DSMs are supervisors within the meaning of Section 2(11) of the Act, in that they discipline and assign work to employees.

When the route salesmen return from their routes, their trucks are unloaded by the loader/unloader. The route salesmen will occasionally assist the loader/unloader in removing soiled linen from a truck. The route salesmen then “cash in”, that is, they enter data into a computer to reconcile the monies collected, sales receipts and credits for their accounts.

The route salesmen work about 12 hours per day. They are required to leave the facility by 6:30 a.m., and they may start as early as 3 a.m. The route salesmen may return to the facility after 1 p.m. and most return about 2 p.m.; some, however, may work as late as 6 p.m. to finish a route.

The route salesmen are paid a flat rate until their route grows to a certain size, at which time they receive a 7 % commission based on the sales volume of the route instead of a flat rate.<sup>5</sup> They receive approximately \$550 per week, and are paid weekly. Everyone at the facility receives the same benefit package, which includes health insurance, a 401(k) plan and profit sharing.

The route salesmen wear green and white striped shirts bearing their names and the company logo with green pants. In the summer, they may wear green T-shirts with the company logo. All employees at the facility are covered by the same personnel policies.

## **B. Route Supervisors**

As noted, the Employer employs two Route Supervisors, Norm Kearns and Kenny Eddy. At the time of the hearing, Kearns had been employed by the Employer for about 13 months, and Eddy had been with Employer for about two months.<sup>6</sup>

The primary job responsibility of the Route Supervisors is to fill in for route salesmen who are absent because of vacations or illness. On these occasions, when the Route Supervisor “jumps a route”, he performs the same duties as the route salesmen.

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<sup>5</sup> They also receive payments for additional items sold.

<sup>6</sup> Eddy replaced a former Route Supervisor, Mike Dobbins.

In addition to jumping routes, the Route Supervisors perform other duties that the route salesmen also perform, although the route salesmen generally will perform these duties on a more limited basis. For example, the Route Supervisors install new accounts. This entails meeting with a new customer and discussing the details of the service, such as the placement of items. The installation of new accounts by the Route Supervisors occurs about twice a week. The Route Supervisors will also pick up stock from customers that close their accounts. In addition, they will run specials about four times a week.

A few other duties performed by the Route Supervisors are not generally performed by the route salesmen. For example, a Route Supervisor may ride a route with a route salesman to assist him or perhaps to learn new stops. In addition, if the DSMs are not available to approve the results of a route salesman's cash in, the Route Supervisors may be called upon to perform this function. The Route Supervisors also perform route audits where they check the customer's inventory of products to see if it balances with the invoice.<sup>7</sup> The Route Supervisors also perform customer visitations in which they ask the customers a series of standard questions to determine the customers' level of satisfaction.

Like the route salesmen with smaller routes, the Route Supervisors are paid a flat rate. They receive approximately \$450 to \$475 per week, and are paid weekly.<sup>8</sup> The Route Supervisors are required to wear white shirts bearing their names and company logo and green pants. Like the route salesmen, in the summer, they may wear green T-shirts with the company logo. The Route Supervisors do not receive any special training beyond the on-the-job training the route salesmen receive.

Those aspects of the Route Supervisor's position relied upon by the Petitioner as indicia of supervisory authority are discussed in greater detail below.

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<sup>7</sup> DSMs also perform route audits.

<sup>8</sup> The DSMs are paid a flat rate, on a weekly basis, and earn approximately \$525 to \$550 per week.

### **C. Loader/Unloader**

The loader/unloader works from 10 a.m. to 6 p.m. At the start of his shift, before the route salesmen return to the facility, the loader/unloader readies the product to load onto the trucks. Once the route salesmen return to the facility, the loader/unloader removes the soiled linens from the trucks, and then loads products onto the trucks. When loading products onto the trucks, the loader/unloader works with the route salesmen on the placement of the hampers on the trucks in order to make it easier for the route salesmen to service their accounts. The loader/unloader wears a solid green uniform bearing his name and the company logo.

Just as the route salesmen occasionally assist the loader/unloader with his duties, the loader/unloader occasionally goes out with the route salesmen to assist them if they have a particularly heavy day. In the absence of the loader/unloader, his duties are performed by route salesmen, with assistance from the DSMs and the Branch Manager.

The record also contains evidence of a transfer from the loader/unloader position to the route salesman position. Thus, Dennis Paugh had been the loader/unloader for three and one-half to four years and then transferred to a route salesman position about a year ago. In addition, the current loader/unloader, Scott Bassnett,<sup>9</sup> is being trained to perform route salesman duties.

## **II. SUPERVISORY STATUS OF ROUTE SUPERVISORS**

Before examining the specific duties and authority of the Route Supervisors, I will review the requirements for establishing supervisory status.

### **A. Controlling Legal Principles**

Section 2(11) of the Act defines the term supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or

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<sup>9</sup> At the time of the hearing, Bassnett had been employed by the Employer for about two to three months.

effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S.706, 710–712 (2001); Michigan Masonic Home, 332 NLRB 1409 (2000). This is a substantial burden in light of the exclusion of supervisors from the protection of the Act. The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991).

The Board and the courts have observed that the Act sets forth a three-pronged test for determining whether an individual is a supervisor within the meaning of the Act.

Employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their ‘exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,’ and (3) their authority is held ‘in the interest of the employer’.

Franklin Home Health Agency, 337 NLRB No. 132, slip op. at 4 (2002), citing NLRB v. Kentucky River Community Care, Inc., supra.

The exercise of “some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner,” or through giving “some instructions or minor orders to other employees” does not confer supervisory status. Franklin Home Health Agency, supra at 4, citing Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985).

## **B. The Petitioner’s Position**

In this case, the Petitioner contends that the Route Supervisors are statutory supervisors in that they discipline route salesmen and responsibly direct them. The Petitioner does not contend, and the evidence does not show, that the Route Supervisors hire, transfer, suspend, lay off, recall, promote, discharge, assign, or reward other employees, or adjust their grievances, or effectively recommend such action. Those functions are performed by the Branch Manager and the DSMs. Accordingly, I will address only the Petitioner’s arguments that the Route Supervisors are statutory supervisors because they discipline route salesmen and responsibly direct them.<sup>10</sup>

### **1. Discipline**

The record contains three disciplinary action forms, two signed by Route Supervisor Eddy and one bearing the typed name of Phil Davis, who at the time was a Route Supervisor.

Considering first the two forms signed by Eddy, the two forms were issued to the same employee on the same date arising from same course of misconduct. Specifically, the misconduct had occurred when a route salesman was training Eddy. After riding with the salesman, Eddy complained to DSM Adams that the salesman had used foul language towards Eddy, had refused to train Eddy, and was not servicing customers properly. As a result of

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<sup>10</sup> Although the Petitioner’s Brief argues only that the Route Supervisors issue discipline, at the hearing, the Petitioner asserted that it was relying on both discipline and direction of the workforce as indicia of supervisory status. Hence, both are discussed herein.



Eddy's complaints, and other customer complaints, on March 19, 2003, Adams met with DSM Davis and Eddy.<sup>11</sup>

During the course of the meeting, Adams alone decided to issue two disciplinary action forms to the salesman involved.<sup>12</sup> Adams asked Eddy to write his own explanation of what had happened on each form and to sign them. Adams wanted Eddy to be present at the meeting and to sign the forms so that the salesman would respect Eddy as a fellow "human being." Eddy reluctantly completed the forms. Thereafter, Adams summoned the salesman into the meeting and gave him the forms.

The incident described above was Eddy's sole involvement in the disciplinary process. The record is clear that Eddy was involved solely because he was the target of the misconduct. There is no question that the discipline was issued at the direction of the admitted supervisor. Further, Route Supervisor Kearns, who had been employed in that position for 13 months at the time of the hearing, has never participated in any disciplinary meeting or in the issuance of any discipline.

Considering next the third disciplinary action form, which was dated October 2, 2001, and bears the typed name of Phil Davis, who was then a Route Supervisor, this form recites that it is a written discipline for failure to obey direct orders. The Petitioner, although contending the document was probative of supervisory status, offered no testimony explaining the circumstances under which it was issued. Given that Route Supervisor's Eddy's signature appeared on two disciplinary action forms at the direction of the DSM, it cannot be concluded that Davis was signing the form independently rather than at the direction of a DSM.

In addition to the discipline mentioned above, the record also contains an action plan, which documents a discussion about a performance problem that a route salesman was

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<sup>11</sup> The Branch Manager was out of the city at the time.

<sup>12</sup> Adams also made the decision to leave the spaces on the form reflecting the level of progressive discipline blank.

expected to correct within a specified period of time. In this case, the action plan was signed by former Route Supervisor Mike Dobbins and the Branch Manager on January 18, 2001. The Branch Manager testified that Dobbins sat in at the meeting at the request of the Branch Manager and signed the action plan solely as a witness because the DSM was not available at the time. The Branch Manager explained that the Route Supervisors are not involved in the decisions to issue action plans nor are they involved in the development of action plans.

The record affirmatively establishes that the Route Supervisors do not independently issue discipline or corrective action plans, and do not recommend the issuance of discipline or corrective action plans. The circumstances by which their signatures have appeared on the documents introduced into evidence make this clear. At most, their role has been limited, as Eddy's was in the incident described above, to reporting misconduct to an admitted supervisor who, in turn, decided whether to impose discipline and what form any discipline would take. Such a reportorial function is not an indicia of supervisory status. See Illinois Veterans Home, 323 NLRB 890, 891 (1997); Ten Broeck Commons, 320 NLRB 806, 812 (1996).

## **2. Direction of Workforce**

There is no question that the route salesmen work by themselves throughout the course of the day servicing their accounts without any direct oversight by any supervisory personnel. In addition, the Route Supervisors do not assign routes to the route salesmen; rather, routes are assigned by the Branch Manager or the DSMs. Given this situation, the Petitioner apparently based its assertion that the Route Supervisors direct the route salesmen on evidence of the participation of the Route Supervisors in training, approving cash in results, conducting route audits, and handling customer complaints. These activities are discussed below.

### **a. Training**

The Route Supervisors participate in training new route salesmen to run routes. However, the record reveals that all service personnel – other route salesmen and the DSMs, as well as the Route Supervisors – participate in the training of new employees. For example, a

route salesmen was training new Route Supervisor Eddy.<sup>13</sup> In addition, a route salesman is currently training loader/unloader Bassnett in the functions of a route salesman. DSM Davis and Route Supervisor Eddy are also training Bassnett in these functions. Inasmuch as the route salesmen participate in training just as the Route Supervisors and DSMs do, this training cannot be deemed a characteristic of the Employer's supervisors.

**b. Cash In Results and Route Audits**

Unlike the training of new employees, however, two other functions of the Route Supervisors relied upon by the Petitioner are not performed by the route salesmen: approval of cash in results and conducting route audits.

Considering the cash in procedures, the route salesmen cash in at the end of the work day. For the route salesmen, this involves entering data into the computer to balance their accounts. Thereafter, the DSM reviews the data entered in the computer, counts the money turned in by the route salesmen, and approves the cash in results. If the accounts do not balance, the DSM determines the source of the error. If the DSM is not available to perform the cash in procedure, or is too busy to perform it, the DSM may ask the Route Supervisor to do it. This occurs about 10 to 15 percent of the time.

Another function performed by the Route Supervisors, but not performed by the route salesmen, is completing route audits. A route audit involves the Route Supervisor's counting of the inventory at an account to determine if the inventory balances with the Employer's records. If the inventory does not balance, the route salesman may be required to meet with the Route Supervisor and the DSM to resolve the issue.

Both the route audit and the cash in procedure are essentially double checking the work of the route salesmen. Most critical for present purposes is that there is no showing that any negative action is taken against the route salesmen based solely upon the results of the route

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<sup>13</sup> It was during this training that the first disciplinary incident mentioned above arose.

audit or the cash in procedure. That is, if there are deficiencies in the performance of the route salesmen, there is no evidence that any discipline or corrective action is taken against the route salesmen based solely on the results reported by the Route Supervisors. Rather, at most, the Route Supervisors are reporting their results to admitted supervisors for their further action.

In the absence of evidence that the route audits or the cash in results directly affect employees' terms and conditions of employment, the mere reporting of results of the route audits or cash in procedures by the Route Supervisors is not sufficient to confer supervisory status upon them. See Illinois Veterans Home, supra; Ten Broeck Commons, supra.

### **c. Customer Complaints**

The Route Supervisors also participate in assessing the level of customer satisfaction and resolving customer complaints. In general, customer complaints are to be handled in the first instance by the route salesmen, then the Route Supervisors, then the DSMs, and finally the Branch Manager. For example, in the case of one customer who complained about shortages in garments and the mending and alteration of garments, there was a meeting at the customer's facility with the DSM, Route Supervisor Kearns and the route salesman.

To determine the level of customer satisfaction, the Employer distributes good will cards. These good will cards ask the customer to evaluate the route salesmen, the Route Supervisors, and the DSMs. They may be provided to the customer by the route salesmen, the Route Supervisors or the DSMs. The Route Supervisors may review cards and become aware of problems with the performance of a route salesman. If so, they bring this matter to the attention of a DSM, which may lead to the DSM meeting with the route salesman to take corrective action.

In addition to assessing customer satisfaction through good will cards, the Employer also requires the Route Supervisors to make visits to customers to ask certain questions regarding their level of satisfaction. Negative assessments may lead to the Route Supervisors meeting with route salesmen to address problems.

Like the situation with the cash in results and the route audits, there is no showing that any negative action is taken against the route salesmen based solely upon the results of what the Route Supervisor learns from the good will cards or the customer visitations. That is, if there are deficiencies in the performance of the route salesmen, there is no evidence that any discipline or corrective action is taken against the route salesmen based solely on the results found by the Route Supervisors. Rather, at most, the Route Supervisors are reporting their results to admitted supervisors for their consideration.

### **C. Conclusion as to Status of Route Supervisors**

Based on the foregoing, the record as a whole, and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the Petitioner has failed to meet its burden of proving that the Route Supervisors are statutory supervisors in that they do not discipline route salesmen, or responsibly direct their work, as alleged. In addition, the record shows that the Route Supervisors share a sufficient community of interest with the route salesmen such that they should be included together in an appropriate unit. They perform the same tasks as the route salesmen, riding in the trucks with the route salesmen or substituting on routes for them; they have the same supervision; their wages are similar; their employment benefits are similar; and the two groups of employees have frequent daily contact with one another. Accordingly, I conclude that the Route Supervisors are not supervisors within the meaning of Section 2(11) of the Act, and I shall include them in the unit.

### **III. EXCLUSION OF LOADER/UNLOADER**

As noted, the Employer employs one loader/unloader, who is responsible for unloading the trucks upon their return to the facility each day, and then loading the trucks for the next day's deliveries. While the Petitioner excluded the loader/unloader from the petitioned-for unit, the specific reasons for the exclusion were not clearly articulated in the record, and the matter is not addressed in the Petitioner's post-hearing brief. The Employer contends, however, that the

loader/unloader shares a community of interest with the route salesmen and, if excluded, would be the sole unrepresented non-management service employee.

The loader/unloader's duties are closely integrated with the duties of the route salesmen. The loader/unloader works with the route salesmen to load the trucks in the manner most suitable to their particular routes. In addition, he will occasionally assist the route salesmen on their routes, just as the route salesmen will occasionally assist him in unloading the trucks. In the absence of the loader/unloader, the duties of the position are performed by route salesmen, with the assistance of the management employees. Further, there has been transfer between the two positions, with a former loader/unloader transferring to a route salesman position, and the current loader/unloader training for the route salesman position. Finally, like the route salesmen, the loader/unloader reports to the DSMs, wears a uniform, and works daylight hours.

In view of the evidence that considerable mutual interests are shared by the loader/unloader and the route salesmen, that no compelling reason has been articulated to exclude the loader/unloader, and that if the loader/unloader were excluded, he could, depending on the outcome of the election, become the only unrepresented employee in the service department and thus effectively be denied the opportunity to be represented in collective bargaining, I shall include the loader/unloader in the unit found appropriate herein. See Merry Oldsmobile, Inc., 287 NLRB 847, 848 (1987); South Carolina Education Assn., 240 NLRB 542, 544 (1979); Coca-Cola Bottling Co., 229 NLRB 553, 555 (1977).

#### **IV. FINDINGS AND CONCLUSIONS**

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time route salesmen, Route Supervisors and loader/unloaders employed by the Employer at its Clarksburg, West Virginia facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

## **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local Union No. 175, a/w International Brotherhood of Teamsters, AFL-CIO. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as

their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **May 22, 2003**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by



facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

### **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **May 29, 2003**. The request may **not** be filed by facsimile.

Dated: May 15, 2003

/s Gerald Kobell

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Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD  
Region Six  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

**Classification Index**  
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